

The exemptions applied in this instance are:

Section 30(b)(i) – free and frank provision of advice

Some information has been withheld as an exemption under section 30(b)(i) (free and frank provision of advice) of FOISA applies to that information.

This exemption is subject to the ‘public interest test’. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of an open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in allowing a private space for officials to provide free and frank advice to Ministers prior to outlining our position in the public domain.

Section 30(c) – Prejudice to effective conduct of public affairs

Some information has been withheld as an exemption under section 30(c) (prejudice to effective conduct of public affairs) of FOISA applies to that information.

This exemption is subject to the ‘public interest test’. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in protecting the process of how the UK Covid-19 public inquiry conducts their investigation. Premature disclosure of this information is likely to undermine the quality of the Scottish Government’s engagement with the UK Covid-19 public inquiry which is likely to cause harm to the ability of the inquiry to conduct its investigations as effectively and thoroughly as required under its terms of reference, which would not be in the public interest.

Section 37 – Court Records

Some information has been withheld as it is contained within a document which has been created by the UK Covid-19 inquiry for the purposes of that inquiry.. Therefore, an exemption under section 37(1)(b)(ii) of FOISA applies. This exemption is not subject to the ‘public interest test’, so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.

Section 38(1)(b) – Personal data

Some information has been withheld as an exemption under section 38(1)(b) (personal data) of FOISA applies to that information, this is because it is personal data of a third party and disclosing it would contravene the data protection principles in Article 5(1)

of the General Data Protection Regulation and in Section 34(1) of the Data Protection Act 2018. This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.

This email is provided for Ministers by the Covid Inquiry Response Directorate in our role as inquiry response leads. To avoid conflict of interest between Scottish Government's interests as sponsor of and respondent to the Covid Inquiries, and in line with the ethical wall arrangements in place between the sponsorship and response functions, it should not be shared with or cross-copied to officials on the inquiry sponsorship side. Please do not hesitate to contact us to discuss these arrangements further, and we will be happy to assist with any questions or supporting information which would be helpful.

This email is also provided to the Solicitor General for their awareness only of the existence of the draft. We are not seeking any comments or analysis of the draft from the Solicitor General. SG Counsel and SGLD continue their roles of inputting to drafts as "critical friends".

[Redacted – Section 38(1)]

Head of Covid Inquiry Engagement and Information Co-ordination

Covid Inquiries Response Directorate | Scottish Government

I can be contacted via email, MS Teams or on [Redacted – Section 38(1)]

My working days are Monday, Tuesday, Thursday & Friday

Document 2

From: [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>

Sent: Friday, July 7, 2023 4:01 PM

To: First Minister <FirstMinister@gov.scot>; Deputy First Minister and Cabinet Secretary for Finance <DFMCSF@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>

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Directorate for Covid Inquiries
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Document 2 (attachment)

[Redacted – Section 38(1)]
Covid Inquiries Response Directorate
07 July 2023

PS/FM
PS/DFM
PS/ Solicitor General

UK COVID-19 INQUIRY: MODULE 1 RESILIENCE AND PREPAREDNESS

Purpose

1. To update Ministers on the fourth week of evidence to the UK Covid-19 Public Inquiry.

Background

2. The UK Inquiry has been set up to examine the UK's response to and impact of the Covid-19 pandemic and learn lessons for the future. The first public hearing into module 1 on pre-pandemic planning began on 13 June 2023 and is expected to conclude by 20 July 2023. The Inquiry will produce an interim report on its findings on this module and hearings for subsequent modules will follow.
3. The Inquiry Chair, Baroness Hallett, will consider all evidence submitted in respect of the United Kingdom's resilience and preparedness for a pandemic, focusing on the period June 2009 to January 2020. The Scottish Government is co-operating fully with the Inquiry and has submitted evidence in the form of corporate statements, supporting documentation and statements from key individuals.
4. [Redacted – Out of Scope]

Evidence

5. A summary of the common themes and key evidence emerging from the hearing last week is noted below:

Monday 03 July 2023

The Inquiry heard evidence from **Sir Frank Atherton**, Chief Medical Officer for Wales (2016 – present) and **Dr Andrew Goodall**, Welsh Government Permanent Secretary (2021 to date); Director General of Health and Social Services/Chief Executive NHS Wales (2014-2021).

Sir Frank Atherton

- Ministers were always receptive to advice, but it was not always followed diligently.
- There was a lot of work going on in relation to preparedness during his term as CMO, but this was perhaps not escalated to Ministers attention.
- Flu was considered the most likely pandemic agent. There were no countermeasures included for dissimilar diseases, not that these were not considered, but in hindsight they were discounted without adequate consideration.
- In 2018 there was discussion around the need to re-review guidance. No further resources were committed to pandemic planning and no further work was undertaken to update Welsh pandemic guidance due to ‘roadblock’ of UKG inaction.
- Resources were redirected in light of preparations as part of Operation Yellowhammer and this resulted in stalling progress further.
- Wales was drowning in information flow and process.

Dr Andrew Goodall

- Had concerns about the range of subgroups within the Welsh Resilience Framework, but they were working in areas of specific expertise.
- Some bodies may feel they are duplicating responsibilities. There is an ongoing need to have a more efficient, less complex system.
- The Transfer of Functions Order 2018 gave additional responsibilities to Wales, but not with any additional resources from UKG. Implementing regulations to distribute these were overtaken by preparations for no-deal EU exit.
- The WG Resilience Team was under-resourced in comparison to the Scottish equivalent but has expanded and continues to expand.
- Wales previously had only observer status at SAGE. This changed during the pandemic and this was helpful.

Tuesday 4 July 2023

The Inquiry heard evidence from **Dr Andrew Goodall** (Current Permanent Secretary to Welsh Government and former Director General for Health and Social Services and Chief Executive of NHS Wales 2014-2021), **Dr Quentin Sandifer** (Consultant Adviser on Pandemic and International Health at Public Health Wales), **Vaughan Gething** (Former Minister for Health and Social Services Welsh Government 2016-2021 and former deputy Minister for Health 2014-2016) and **Mark Drakeford** (First Minister of Wales 2018-present).

Dr Andrew Goodall

- Since the Transfer of Powers Act 2018 a Welsh Risk register has been considered but not implemented.
- Pandemic flu was not included within the Welsh Corporate Risk Register. There were some inadequacies within the Register, such as too generalised risk factors which gave some false assurances to the WG.
- Various recommendations from Exercises Taliesin and Cygnus were not implemented, particularly in relation to care homes, national response capacities and surge requirements. The Pollock Review did not rectify this.
- The Review of Civil Contingencies in 2023 assessed the flaws in the system. Many lessons have been learned and assessment should continue.
- The fragility of microbiology and infection services in Wales was recognised in 2019, hence there was investment into the NHS.
- PPE stockpiles were well tested and during the pandemic Wales relied on the national procurement service adapting quickly. Greater consideration of this system is required for future planning.

Dr Quentin Sandifer

- Public Health Wales (PHW) discharged its emergency preparation, response, and recovery functions adequately, but microbiology services became fragile in 2015 due to senior retirements.
- Public Health Wales Emergent Response Plan 2018 was a generic plan. It didn't include an influenza pandemic as while it was recognised that this was at the top of the risk assessment, the plan focussed on other issues such as Brexit.
- The WG led on stock piling of PPE and occasionally provided advice on specific questions but had no other direct involvement. The guidance had not envisaged a full-scale lockdown.
- There are complexities within the Welsh preparedness structure and documentation and streamlining this would be beneficial.
- The definition for who qualified as vulnerable in the Plan mirrored UKG planning. In hindsight, the descriptions were not broad enough and the 2023 guidance still doesn't go far enough.

Vaughan Gething

- Had some general awareness of pandemic flu risk, but generally relied on official briefings. He did not read any of the pandemic planning documentation/protocols and first read the UK Pandemic Planning Strategy in preparation for the Inquiry.
- The strained ministerial relationships with UKG hampered Welsh preparedness but these improved over the course of the pandemic.
- Due to other 'headline issues' pandemic preparedness was never a top priority or subject to scrutiny.
- Briefed on the capacity issues around care homes from Exercise Cygnus. If he had put more time into this area it may have sped up preparedness.
- With PPE there is a price/security trade off. There are political and financial choices to make around our supply chains which have budget implications. PPE stockpiling did not stand up to the reality of the pandemic.

- There was a degree of surge capacity within the system but bolstering this involves investing in people and diverting resources.
- Wales was not prepared for the hospital capacity requirements in the pandemic and didn't have a granular plan on creating capacity.
- Not prepared for the number of deaths that took place in the early pandemic. Not planning for excess deaths led to additional suffering and this was his responsibility as Minister.

Mark Drakeford

- The Transfer of Functions Order 2018 regularised the status quo, but no funding followed from UKG for the additional functions.
- The complexity of preparedness/planning system is less complex from a ministerial point of view and it was believed the system when called upon will operate in a comprehensible way.
- Governments lack a systematic basis of communication and rely on individual willingness.
- Report from 2018 gave a reasonable Assurance Rating (down rated from 2010) to preparedness. The system did not have a wholesale change post audit as a root and branch change were not required.
- Planning for no deal Brexit was in motion as soon as he became FM and diverted resources from preparedness work, but no deal Brexit had huge potential consequences.
- Addressing inequalities is the work of Government generally but it's difficult to anticipate where those inequalities would fall in advance of the emergency.
- Involved in swine flu as a SpAd and did not feel the need to specifically ascertain the risk of novel virus/disease X when he came became a Minister.

Wednesday 05 July 2023

The Inquiry heard evidence from **Dr. Catherine Calderwood** (Former Chief Medical Officer for Scotland 2015-2020), **Prof. Jim McManus** (President of the Association of Directors of Public Health), **Kevin Fenton** (President of the UK Faculty of Public Health), **Mark Woolhouse** (Professor of Infectious Disease Epidemiology at the University of Edinburgh)

Dr. Catherine Calderwood

- Dr Calderwood noted she had a very good working relationship with other CMOs.
- The Scottish C19 Advisory Group comprised of a diverse group of people, including those critical of pandemic response and happy to debate.
- The advisory groups set up should not be unwound now. Would also like to see various clinical advancements retained and data collaboration.
- Scottish representatives dialled in to SAGE meetings (held in London) Dr Calderwood noted there were technology challenges which impacted those attending remotely, and that a comprehensive readout of the meetings was often not provided.

- Dr Calderwood noted that she would have been aware of the Scottish Risk Assessment, but its development would have been led by civil servants. Counsel stated it was surprising that the CMO was not directly involved in such a document. CC stated that with the benefit of hindsight the CMO should have a more direct involvement but did not remember being part of any discussion on this idea.
- Several recommendations from Exercise Iris were implemented, several were not. Some were not continued due to staffing when staff were moved into pandemic work.
- It will be difficult to run similar exercises in the future that are useful because we cannot keep staff in the NHS from their urgent work.
- There was a shortage of data which impacted our abilities to make decisions at the beginning of the pandemic.

Prof. Jim McManus

- The Civil Contingencies Act and Public Health Act are not always cohesive, and the local health resilience landscape can be complex and create confusion/duplication.
- The impact of budget cuts to local services has been large and impacted areas disproportionately. Austerity has also impacted Director's ability to prepare for emergencies.
- We were prepared for an influenza flu, but a coronavirus pandemic was foreseeable.
- Health inequalities have to be at centre of pandemic preparations.
- There were issues communicating with central government due to the top-down approach. Issues with knowledge of the guidance, communication and a general lack of understanding of local authority capabilities but communication with Chriss Witty and other CMOs was exemplary.
- Data sharing between Directors and central government should be improved and Directors should be involved in exercises.

Kevin Fenton

- In hindsight there was a missed opportunity to understand the risks associated for people with protected characteristics.
- We did not look at the range of interventions because our planning was narrow in scope. We realised early in the pandemic that we needed to also look at social interventions, as well as clinical.
- Inequalities should be incorporated in planning and perspectives from those at greater risk should be included. Data sharing/gathering should be in place to better respond in an equitable means.
- We need a 'widening of the tent' and commitment from Government to deal with inequalities.
- The legislative framework is unclear and not fit for purpose. The roles and responsibilities of health bodies within the Civil Contingencies Act needs updating.
- We need to recognise and value the workforce and structure and invest in them. We need to have the voice of public health practitioners in planning at every level of government.

- The absence of a national system of data capture was a flaw in our preparedness. One lesson to learn is the need for good data to understand health disparities.

Mark Woolhouse

- The Security Index is a poor predictor of a response to a pandemic and not well designed. We need to deconstruct the idea of an index and give more consideration to how important vulnerabilities are.
- ‘Disease X’ indicated there was the threat of something new and not understood, but Government focussed on influenza. This was a rational strategy, but they did not hedge their bets.
- The issue for health research is largely data access and the procedures in Scotland for accessing data are very onerous. Data access became easier during the pandemic, but it is still unclear what the long-term effect will be.
- The post pandemic focus on technological advancements (e.g., vaccinations) is good but in the early pandemic lives were saved by patient care, epidemiology and public health, and these are just as important as vaccines.

Thursday 06 July 2023

The Inquiry heard evidence from **Dr. Denis McMahon** (Permanent Secretary of the Executive Office NI), **Reg Kilpatrick** (Director of Local Government Department 2011-2020 and now Director General Covid Recovery and Local Government in Welsh Government) and **Robin Swann** (Former Minister of Health NI between 2020-2022).

Dr. Denis McMahon

- There was no broad, self-standing audit function in NI to create assurance documents for preparedness or emergency planning.
- Planning documents need to be clearer and we need a process that doesn’t presuppose a particular threat but is based on general principles.
- NI needs greater legislated obligations above the Civil Contingencies Act, particularly because their needs to be a framework for when the power sharing agreement collapses.
- NI Risk Register assessments mirrored the UK approach, so similarly focussed too much influenza and the effects of a pandemic, rather than prevention.
- From 2016-2022 lost many staff and had to divert resources to prepare for Brexit. Whatever the view of the inquiry is on how they performed, it would have been worse if they hadn’t put in place the model for EU exit. Operation Yellowhammer did have some benefits.
- Civil contingencies were poorly resourced and the NI Executive fell behind with preparedness in comparison to other governments. The lack of Ministerial direction impacted the NI Executive at every level.
- Decisions with the UKG were sometimes dictated, not collaborative.
- Devolved administrations need to be a part of SAGE and the NI Executive should be involved in future preparedness exercises.

Reg Kilpatrick

- Welsh Ministers have had greater control since 2018 to prepare for emergencies, but no review work took place on the review until 2022 because of Operation Yellowhammer and the pandemic.
- The structures in Wales could be simplified, but if you look at one feature (such as preparedness) it's simple. It's the duties that are complex.
- The Wales Resilience Forum has a wide range of threats that it has to deal with, so had to balance short term/long term risks. Could have focussed more on the national risk register than they did.
- The Pan Wales Response Plan sets out structures and principles but does not review resource issues and needs to clarify accountabilities.
- Concerned that the WG was reactive to UK guidance documents. We want any UK documents and guidance to reflect conditions/concerns of Wales.

Robin Swann

- The 2019 Emergency Response Plan only related to pandemic influenza but with hindsight should have had broader focus.
- Vital services and adult social care were underfunded. Numerous reviews have failed to be enacted, largely due to a shortage of funding.
- NI had the worst waiting lists across the UK and the state of the health service when the pandemic hit meant that the surge capacity came from standing down other services.
- Communications with colleagues in England was poor and decisions were made without NI involvement.
- There was a deficit into SAGE from NI. NI had no right to representation at SAGE before 2020.

Next Steps

6. The UK Inquiry will reconvene on Monday 10 July, to hear UK, Welsh, Northern Irish and expert witnesses. Next week's witnesses include:

- Dr. Claas Kirchhelle (Expert)
- Prof. Sir Michael McBride (Chief Medical Officer for Northern Ireland since 2006)
- Dame Arlene Foster (Former First Minister of Northern Ireland 2020-2021)
- Richard Pengelly, Former Permanent Secretary for Department of Health, Northern Ireland 2014-2022
- Michelle O'Neill, Former Deputy First Minister of Northern Ireland between 2020-2022 and Former Minister of Health 2016-2017
- Mark Lloyd, Chief Executive of the Local Government Association
- Chris Llewellyn, Chief Executive of the Welsh Local Government Association
- Allison Allen, Chief Executive of the Northern Ireland Local Government Association
- Aidan Dawson, Chief Executive of Public Health Agency Northern Ireland
- Marcus Bell, Director of the Government Equality Hub

- Melanie Field, Chief Strategy and Policy Officer of the Equality and Human Rights Commission
- Nigel Edwards , Chief Executive of Nuffield Trust
- Richard Horton, Editor in Chief of the Lancet, a medical journal and author
- Michael Gove, Former Chancellor of the Duchy of Lancaster 2019-2021 and DEFRA Secretary of State 2017-2019

Quality Assurance

7. This submission has been approved by Tabitha Stringer, Deputy Director, Covid Inquiry Response, and is copied to Special Adviser Davie Hutchison.

Recommendation

8. The First Minister, Deputy First Minister and Solicitor General are invited to note this update.

[Redacted – Section 38(1)]
Covid Inquiries Response Directorate
07 July 2023

Document 3

From: [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>

Sent: Friday, July 14, 2023 4:10 PM

To: First Minister <FirstMinister@gov.scot>; Deputy First Minister and Cabinet Secretary for Finance <DFMCSF@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>

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Subject: Ministerial Update - UK Covid Inquiry - Module 1 Oral Hearings Week 5

PS/FM

PS/DFM

PS/Solicitor General

UK COVID-19 INQUIRY: MODULE 1 RESILIENCE AND PREPAREDNESS

Please find attached the weekly update for the FM, DFM and Solicitor General to note, in relation to the UK Covid Inquiry's Module 1 Oral Hearings (week 5).

Kind regards,

Rachel

[Redacted – Section 38(1)] (**Pronouns: She/Her**) – **Why I Put Pronouns on my Email Signature**

Team Leader, Covid Inquiries Response Directorate

1st Floor East | Silvan House| 231 Corstorphine Road | Edinburgh | EH12 7AT

I can be contacted via email, MS Teams or on [Redacted – Section 38(1)]



Document 3 (attachment)

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Covid Inquiries Response Directorate
14 July 2023

PS/FM
PS/DFM
PS/Solicitor General

UK COVID-19 INQUIRY: MODULE 1 HEARING

Priority and Purpose

1. Routine: to update Ministers on the fifth week of evidence to the UK Covid-19 Public Inquiry.

Background

2. The UK Inquiry has been set up to examine the UK's response to and impact of the Covid-19 pandemic and learn lessons for the future. The first public hearing into Module 1 on pre-pandemic planning began on 13 June 2023 and is expected to conclude by 20 July 2023. The Inquiry will produce an interim report on its findings on this module and hearings for subsequent modules will follow.
3. The Inquiry Chair, Baroness Hallett, will consider all evidence submitted in respect of the United Kingdom's resilience and preparedness for a pandemic, focusing on the period June 2009 to January 2020. The Scottish Government is co-operating fully with the Inquiry and has submitted evidence in the form of corporate statements, supporting documentation and statements from key individuals.
4. [Redacted – Out of Scope]

Evidence

5. The common themes and key evidence emerging from the hearings last week are noted below.

Monday 10 July 2023

6. The Inquiry heard evidence from **Dr. Claas Kirchhelle** (Expert) and **Prof. Sir Michael McBride** (Chief Medical Officer for Northern Ireland since 2006).

Dr. Claas Kirchhelle

- Scotland is remarkable, seen in through the policies of many administrations, in its fostering of a collaborative system and approach to health care.
- In the NHS system you can have public health budgets raided to provide support to more short-term problems. You need to defend budgets. This is a problem across the UK.
- The SARS plan had numerous recommendations on how authorities should deal with an epidemic, but the plan had gaps. There was criticism that if a SARS pandemic happened there would be difficulties with surge capacities.
- 2011 Pandemic Flu Plan – lack of non-medical counter measures for e.g., lock downs etc. Non-medical counter measures are core part of pandemic planning. The plan from SARS had many counter measures that were used in the COVID response, e.g., school closures. But the big difference is the scale of COVID that was not focussed on in the plans.
- There was not enough focus on structural effects on behaviour in planning, e.g. how do persons from a particular ethnic background relate to health care systems.
- Exercise Cygnus assumed homogeneity of population, there was a remarkable lack of consideration of the diversity of the population in the UK.
- Nothing at the global level matters if it can't be enacted locally. In the UK we have seen, and accelerated in devolution, a lack of diversity of structures. There needs more active involvement with devolved administrations. More diverse views will likely create more resilient structures.
- Very difficult to prepare for the future if you are in political turmoil, with fiscal pressures and also preparing for Brexit.

Prof. Sir Michael McBride

- The NI CMO had no seat in SAGE and neither did the CSO. For a health emergency moving forward there must be full membership of such bodies. If it's a health emergency there's a requirement from the outset of being a part of SAGE.
- Forecasting and modelling in the event of a pandemic improved in NI over the pandemic and fed into improved advice.
- The collapse of the power sharing executive, and lack of ministers effected our ability to create new policy and barred the creation of legislation. All the

work in the Programme for Government – we lost out in a cross-Government response.

- The identification of a risk in 2018 in relation to surge capacity and to health and social care services. There is a risk in relation to financial resources not being sufficient and available. There is a shortfall to reach the Health Service Goals.
- NI Plan was very similar to the Welsh Guidance. Benefited from sharing guidance. Our plan aligned with the UK so had same flaws in terms of absence of consequences of different levels of transmission and the like.
- We are a small nation and have a small Dept of Health and are as such dependent on gaining information and data from other nations.
- Exercise Goliath was conducted in 2003 in response to SARS. In the lessons identified was the lesson that contact tracing needs to be updated in its ability to handle increase in surge and contact tracing capacity.
- We should see preparedness as part of the day job. In addition to specialist expertise we need a set of generic skills across all department in Government that can be scaled up when the need arises.
- In terms of life expectancy, UK fell from 26th globally in 2010 to 36th globally in 2020. Life expectancy growth began to stall in 2011 that started the same time as the Conservative Government came in with a focus on austerity. The public health agency has faced budget reduction for over a decade. As a result we were unable to respond appropriately and we were ill equipped to cope. The health service in 2020 was not as resilient as it was even in 2009.

Tuesday 11 July 2023

7. The Inquiry heard evidence from **Arlene Foster DBE (Baroness Foster of Aghadrumsee)**, member of the House of Lords (November 2022 – present) and former First Minister of Northern Ireland (2016/17 and 20/21), and **Richard Pengelly**, NI Permanent Secretary at Department of Justice (April 2022 – present) formerly Department of Health (July 2014 – April 2022).

Arlene Foster DBE

- The UKG NI office taking decision not to intervene in NI was a failing given that NI is a devolved administration. This was a gap that should have been addressed.
- Apparent when returning to FM role in January 2020, after 3 years without ministers, there was a shortage of resources and a general a lack of oversight.
- There was a reduced resilience in NI due in part to EU Exit planning. The UKG should have addressed this gap.
- Determination of the Civil Service and NHS was clear and something to be very proud of.
- Number 1 risk across the UK was, prior to that time, a flu pandemic.
- The NI Strategic Intelligence Group was formed because scientific intelligence available failed to pay due regard to specific circumstances of NI. Augmenting information coming from Whitehall allowed us to have ability to pinpoint the transmissibility in NI and do NI modelling.

- Was in touch with ministers in London on a daily basis. Intergovernmental relations were tested after the vote to leave EU. Scotland, Wales and ourselves had particular issues which was the genesis of the UK government's departmental review.
- Complexion of devolved and UK government definitely posed challenges.
- Fundamental reform necessary in NHS. If necessary for the system, necessary for resilience too, especially in a health emergency context.
- Fear and panic ensued when covid struck. Not enough consideration was given to the non-health impact of lockdowns etc.

Richard Pengelly

- Had no specific concerns about efficacy of the resilience structures. It is a complex landscape with a risk of duplication and overlap. We strive to avoid silo working and increase cross-departmental working.
- EPRR work naturally crosses various organisations and sectors. To bring these together requires establishment of groups.
- NI Health and Social Care Influenza Pandemic Preparedness and Response Guidance (2013) was closely aligned to 2011 UK strategy so any failings would have followed through to this document.
- It was not updated prior to pandemic being struck. Awaited UK version to do refresh of NI document.
- It was aimed at the number one threat (pandemic flu) therefore did not provide for e.g. different mortalities and transmissibility, or different NPIs (such as lockdowns). In light of the pandemic it would be sensible for this to be included.
- A risk was identified re a shortage of funding for department of health. The risk was not about way resources were managed but the total quantum of resources made available. This can be seen in the constant increase in waiting lists up until the moment with the longest in the UK.

Wednesday 12 July 2023

8. The Inquiry heard evidence from **Michelle O'Neill**, Former Deputy First Minister of Northern Ireland between 2020-2022 and Former Minister of Health 2016-2017; **Mark Lloyd**, Chief Executive of LGA, **Chris Llewellyn**, Chief Executive of WLGA, and **Alison Allen**, Chief Executive of NILGA; and **Aidan Dawson**, Chief Executive of Public Health Agency Northern Ireland.

Michelle O'Neill

- Her priority was to transform the health and social care system, she had a plan in place but resourcing was not met due to austerity budgets.
- Many issues regarding risk, structure or document review should have been brought to her attention as Minister of Health but there were not.
- A lack of health reform meant NI was in a worse place to be prepared for a pandemic and was less resilient.
- There needed to be a more joined up approach to planning with Westminster.

- Communications with the UK government were not good and a tick box exercise for NI with decisions already being made.

Mark Lloyd, Chris Llewellyn & Alison Allen

- Having the functions of the Civil Contingencies Act 2004 at local level is best despite there being room for improvement in arrangements.
- There needs to be better engagement with Government and Local Government to ensure the right information is provided to the local authorities delivering the functions.
- Pandemic plans were able to be adapted at local level.
- There is a level of secrecy of information from government not sharing with local government which means Local Government cannot plan appropriately.
- Local Authorities are best placed to assess the needs and deliver these to vulnerable groups.

Aidan Dawson

- There were various issues with resourcing for PHA such as not having a local laboratory or effective modelling resource.
- PHA were not adequately prepared for the pandemic as it arrived.
- There are a number of things that PHA is working on for improvement going forward such as better IT, better modelling and better training.

Thursday 13 July 2023

9. The Inquiry heard evidence from **Marcus Bell** (Director of the Government Equality Hub), **Melanie Field** (Chief Strategy and Policy Officer of the Equality and Human Rights Commission), **Nigel Edwards** (Chief Executive of Nuffield Trust), **Richard Horton** (Editor in Chief of the Lancet, a medical journal and author), and **Michael Gove** (Former Chancellor of the Duchy of Lancaster 2019-2021 and DEFRA Secretary of State 2017-2019).

Marcus Bell

- Equality Hub was created in September 2020 which postdates Module 1.
- The units that joined to make up the Hub had no involvement in pre-pandemic planning. Pandemics were not on our radar.
- The 2011 Pandemic Flu document contains little consideration of equalities.

Melanie Field

- Equality and Human Rights Commission (EHRC) is a statutory non-departmental public body established by the Equality Act 2006, set up in 2007, replacing predecessor equality organisations. Responsibility to promote equalities and human rights issues and to enforce the Equality Act 2010.
- EHRC is not aware of any contact in relation to pandemic planning pre-pandemic.
- In preparedness planning there appears to have been an inadequate consideration of health and other inequalities and secondly inadequate

consideration that people might need different responses to have equal outcomes.

- In health and social care there is an inconsistency in data collection related to protected characteristics. Important to collect that data but also to join this up with different systems.

Nigel Edwards

- Nuffield Trust (NT) is a charitable foundation with a focus on research. NT makes available an evidence base to better understand care structures in the UK.
- NT didn't look specifically look at pandemic planning as we did not have the internal expertise to do that and various sources suggested UK was well prepared for pandemics. NT main area of focus has been the ability and resilience of NHS to cope with winter pressures.
- There were plans in place for dealing with flu but not for a long term sustained incident.
- Oxygen supply – requirement for high flow oxygen as a method for treating covid-19 came as a surprise both clinically but also to hospital estates departments and many existing systems were inadequate (e.g. pipes not sufficient) and they had to make engineering and structural changes to accommodate this.
- Previous MERS exercises only covered hospitals not social care. Exercise Cygnus did also deal with social care but NT cannot find evidence that the recommendations from that exercise were taken forward re the social care sector.
- The UK has a very low number of beds per capita compared to other countries. The number of beds has remained static, while population and age has gone up meaning the hospital system is highly constrained. Workforce has been growing but so too has the number of vacancies and the use of temporary/bank/agency care.
- In social care, funding comes from councils and many had significant reductions in their funding from central government. In 2019 funding was less than in 2010/2011 levels but with increased demand.
- EU Exit had an impact on resilience. There was a substantial drop in the social care workforce coming from the EU from 2016 onwards. Social care went into the pandemic with a shortfall in its workforce and with significant recruitment and retention issues.

Dr Richard Horton

- Lancet has 24 journals and offices around the world. Deals with many areas including infectious diseases and public health.
- UK did well in the Global Health Security Index (GHSI) prior to the pandemic. Indicative performance in the GHSI did not necessarily match up to UK's performance.
- The medical community thought coronaviruses were a relatively benign category of viruses and we were truly shocked when SARS came along.

- We were overconfident in our NHS's ability to cope. Some of the chronic weaknesses in the NHS left us very underprepared.
- Failure to respond to signals from the simulation exercises contributed to UK's early misadventures in responding to covid. Exercise Cygnus in 2016 clearly documented weakness in areas which subsequently became major concerns in dealing with Covid-19.
- UK hit by a 'syndemic' which is the joining together of two biological epidemics – connects the biological epidemic with the social. The two biological epidemics were the virus itself and poor health (diabetes, obesity etc) in our existing populations. This overlaid on patterns of social inequality which meant we had a toxic risk profile. You need to think of the overall health of the population and you must reduce inequalities. Cannot only focus on dealing with the virus.
- Pandemic plan must think of the pandemic as a 'syndemic' or you will not be truly be prepared for a pandemic. Close relationship between resilience and proper planning. Vulnerability and inequality must be first and foremost. Those living with chronic disease and those living in more deprived areas must be at the forefront.
- We have an excellent NHS but we do not have an effective public health system which left us particularly vulnerable to Covid-19. There was chronic underfunding and in England we also have a very centralised public health system.

Michael Gove

- I don't accept that EU Exit planning had a detrimental impact on pandemic planning.
- I have seen documents indicating the work of the pandemic flu board was paused due to workforce issues, but ultimately the pandemic we saw was not the pandemic we prepared for, nor had any western nation.
- Preparation for EU Exit in and of itself was some of the best preparation that could have prepared us for any future crisis. Tested general skills in crisis management.
- There should be much more regular exercising and involving military planners is important.
- There have been issues with information cascading to local resilience fora. Better information sharing is in everyone's best interests. UKG will use forums such as resilience direct to ensure greater information sharing.
- National Risk Assessment (NRA) and National Security Risk Assessment (NSRA) must be shared with those at the front line of response and that is reflected in the new UKG Resilience Framework.
- Needs to be significant community engagement in resilience and preparedness, although certain information cannot be shared due to security concerns.
- Behavioural science and social science has an important role in pandemic planning. One of the reasons ministers were initially told that there would be a low tolerance of lockdowns was because that was the consensus of the behavioural scientists.

- On John Swinney's comments that UKG-SG relations in the run up to the pandemic had been pretty poor. There was effective cooperation between UKG and SG on a day to day basis. However, SG and those leading it sometimes have an incentive to accentuate the negative in the relationship. Because of SNP views they present the UK as a dysfunctional state but to their credit both SG Ministers and SG officials work well with UKG on the day to day.

Related Parliamentary Business

10. The following written PQ, lodged on 3 July 2023, may have been triggered by the recent hearings. It was sent to Private Office on 13 July 2023 for the approval of the Minister for Public Health and Women's Health. The Parliament deadline is 31 July 2023.

S6W-19641: *To ask the Scottish Government what its current contingency plans are in the event of a non-flu pandemic.* **Monica Lennon**

Answer: The Scottish Government has put a range of measures in place to address the risk of future pandemics. These are informed by learning from experience of the Covid-19 Pandemic about the need to respond differently to non flu pandemics. We continue to maintain stockpiles of PPE and medicines to address a pandemic threat and we are also working with 4 Nations partners to review the countermeasures and capabilities required to address future pandemic threats and ensure our resilience measures remain robust. In Scotland, we have established the Standing Committee on Pandemic Preparedness to bring together scientists and technical experts to advise the Scottish Government on the future risks from pandemics and how we can be as prepared as it is possible to be for these.

Next Steps

11. The UK Inquiry will reconvene on Monday 17 July for the final week of the Module 1 Oral Hearing. Next week's witnesses include:

- Kate Bell ((Assistant General Secretary of the Trades Union Congress)
- Gerry Murphy (Assistant General Secretary of the Irish Congress of Trade Unions)
- Prof. Philip Banfield (Chair of the British Medical Association's UK Council)
- Dr. Jennifer Dixon (Chief Executive of Health Foundation)
- Michael Adamson (Chief Executive of British Red Cross)
- Matt Fowler (Covid-19 Bereaved Families for Justice)
- Brenda Doherty (Northern Ireland Covid-19 Bereaved Families for Justice)
- Anna-Louise Marsh-Rees (Covid-19 Bereaved Families for Justice Cymru)
- Jane Morrison attending remotely (Scottish Covid Bereaved)

12. The Inquiry will also hear closing remarks from Core Participants. The Scottish Government will provide a written closing statement to the Inquiry in due course and will not give oral closing remarks.

Quality Assurance

13. This submission has been approved by Tabitha Stringer, Deputy Director, Covid Inquiry Response, and is copied to Special Adviser, Davie Hutchison.

Recommendation

14. The First Minister, Deputy First Minister and Solicitor General are invited to note this update.

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Covid Inquiries Response Directorate
14 July 2023

Document 4

From: [Redacted – Section 38(1)]

Sent: Friday, July 7, 2023 2:10 PM

To: First Minister <FirstMinister@gov.scot>; Deputy First Minister and Cabinet Secretary for Finance <DFMCSF@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>

Cc: Permanent Secretary <PermanentSecretary@gov.scot>; Lesley Fraser <Lesley.Fraser@gov.scot>; DG Corporate <dgcorporate@gov.scot>; Caroline Beattie <Caroline.Beattie@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; SGLD Covid Inquiries Mailbox <[Redacted – Section 38(1)]@gov.scot>; Claire Tynte-irvine <Claire.Tynte-irvine@gov.scot>; Tabitha Stringer <Tabitha.Stringer@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; Dave Watson <Dave.Watson@gov.scot>; Ruaraidh Macniven <Ruaraidh.Macniven@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; David Hutchison <David.Hutchison@gov.scot>

Subject: Routine: Submission regarding Cabinet Office UK Covid Inquiry judicial review

PS / First Minister

PS / Deputy First Minister and Cabinet Secretary for Covid Recovery

PS / Solicitor General

Please find attached a short submission providing an update on yesterday's High Court judgment dismissing a claim by Cabinet Office for a judicial review of a Section 21 notice from the UK Covid-19 Inquiry.

Please let me know if you require anything else on this, I shall be happy to help.

Kind regards,

[Redacted – Section 38(1)]

Head of Scottish Inquiry Engagement and Wider Scrutiny
Covid Inquiry Information Governance Division
Covid Inquiries Response Directorate
Scottish Government
[Redacted – Section 38(1)]

Document 4 (attachment)

From: [Redacted – Section 38(1)]
Covid Inquiries Response Directorate

7 July 2023

**First Minister
Deputy First Minister
Solicitor General**

**UK COVID-19 INQUIRY: UPDATE ON UK COVID INQUIRY HIGH COURT
JUDGMENT REGARDING THE PROVISION OF UNREDACTED**

PRIORITY AND PURPOSE

1. This submission updates Ministers on the recent ruling dismissing a claim by Cabinet Office for a judicial review of a Section 21 notice from the UK Covid-19 Inquiry (the UK Inquiry) requesting WhatsApp messages, diaries and notebooks between the former Prime Minister, Boris Johnson and his advisers.

RECOMMENDATION

2. Recommends that Ministers note the contents of this submission.

CONTEXT AND ISSUES

3. On 23 May 2023, the UK Inquiry ruled against a Cabinet Office application to strike down a Section 21 notice requesting unredacted diaries, notebooks, and WhatsApp messages for the then-Prime Minister Boris Johnson.

4. The Cabinet Office's application had rested upon the question of who should decide whether any WhatsApp message was or might be relevant to the work of the inquiry. The Cabinet Office argued that the documents contained "unambiguously irrelevant material" and that the Chair of the UK Inquiry had no power to issue a notice in respect of material falling within that category, meaning that the notice should be revoked. The UK Inquiry insisted on clean unredacted copies of all the WhatsApp messages so that they could be seen in context.

5. In her ruling, the Chair of the UK Inquiry remarked on the great breadth of the Inquiry's investigation, which is bound to involve factual matters that were not specified in, but may be collateral to, issues identified in the UK Inquiry's Terms of Reference and in the published provisional scope document for any module of the Inquiry. The Chair also stated that to evaluate the response of the government and/or

of any individual Minister to the pandemic, it may be necessary for reasons of context for the Inquiry to understand the other (superficially unrelated) political matters with which they were concerned at the time.

6. Following this ruling, the Cabinet Office applied for a judicial review of the Chair's ruling. The claim for a judicial review was opposed by the Chair of the UK Inquiry, and Boris Johnson formally expressed his support for the approach taken by the Chair of the Inquiry. The Chair of the Scottish Covid-19 Inquiry also intervened through written representations to support the approach taken by the Chair of the UK Inquiry.

7. [Redacted – Section 30(c)]

RULING

8. On 6 July, High Court judges released their judgment on the Cabinet Office's application for a judicial review of the UK Inquiry's Section 21 notice, granting permission for the UK Government's claim that it had met the threshold of an arguable case but ultimately ruling against the Cabinet Office's claim for the Section 21 notice to be struck down¹.

9. The judgment noted although the Section 21 notice will yield some irrelevant documents, this does not invalidate the notice or mean that it cannot be lawfully exercised. The judges highlighted that inquiries are allowed a degree of latitude to make informed but speculative requests for documents relevant to existing lines of inquiry that may result in new lines of inquiry.

10. The judgment also stated that where a request for documents yields irrelevant material, this does not invalidate the request, it simply means that irrelevant material will need to be redacted.

11. Although the ruling afforded the Cabinet Office the right to appeal they have released a statement², confirming that they will fully comply with the judgment and will work with the UK Inquiry team on the practical arrangements following on from the ruling.

QUALITY ASSURANCE

12. This submission has been approved by Tabitha Stringer, Deputy Director for the Covid Inquiries Response Directorate and Caroline Beattie, Head of Employment and Covid Inquiries Division for SGLD.

CONCLUSION AND NEXT STEPS

¹ [Cabinet Office -v- Chair of Covid Inquiry \(judiciary.uk\)](https://www.judiciary.uk/cabinet-office-v-chair-of-covid-inquiry/)

² [Cabinet Office on Twitter: "A statement from the Cabinet Office on today's judicial review court ruling. https://t.co/pZGpkFhrT3" / Twitter](https://t.co/pZGpkFhrT3)

13. Officials will continue to monitor issues relating to the provision of material to both the UK and Scottish inquiries and will provide Ministers with further updates as required.

[Redacted – Section 38(1)]
 Covid Inquiry Information Governance Division
 Directorate for Covid Inquiries Response

Cabinet Secretaries and Ministers Copy List	For Action	For Information Portfolio interest	For Information Constituency interest	For Information General awareness
First Minister	X			
Deputy First Minister and Cabinet Secretary for Covid Recovery	X			
Solicitor General	X			

Officials Copy List
John-Paul Marks, Permanent Secretary Lesley Fraser, DG Corporate Ruaraidh Macniven, Solicitor to the Scottish Government and Director of SGLD Legal Secretariat to the Lord Advocate Caroline Beattie, Head of Employment and Covid Inquiries Division, SGLD [Redacted – Section 38(1)], SGLD [Redacted – Section 38(1)], SGLD [Redacted – Section 38(1)], SGLD Dave Watson, Chief Information Officer David Hutchison, Special Adviser Claire Tynte-Irvine, Interim Director of Covid Inquiries Directorate Tabitha Stringer, Deputy Director, Covid Inquiries Directorate [Redacted – Section 38(1)], Covid Inquiries Directorate [Redacted – Section 38(1)], Covid Inquiries Directorate [Redacted – Section 38(1)], Covid Inquiries Directorate [Redacted – Section 38(1)], Covid Inquiries Directorate

Document 5

From: [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>
Sent: Friday, July 14, 2023 11:15 AM
To: First Minister <FirstMinister@gov.scot>; Deputy First Minister and Cabinet Secretary for Finance <DFMCSF@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>
Cc: DG Corporate <dgcorporate@gov.scot>; DG Economy <DGEconomy@gov.scot>; DG Health & Social Care <DGHSC@gov.scot>; Claire Tynte-irvine <Claire.Tynte-irvine@gov.scot>; Tabitha Stringer <Tabitha.Stringer@gov.scot>; SGLD COVID-19 Inquiries <[Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>

38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; Ruaraidh Macniven <Ruaraidh.Macniven@gov.scot>; David Hutchison <David.Hutchison@gov.scot>; Linda Pooley <Linda.Pooley@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>
Subject: For information: 17 July submission of [Redacted – Section 30©

PS / First Minister

PS / Deputy First Minister and Cabinet Secretary for Finance

PS / Solicitor General

[Redacted – Section 30(c)]

A summary of the attachments to this email follows:

- [Redacted – Section 30(c)]
- A copy of the draft response for reference (*M6 – Annex B – 1a-c response*)

[Redacted – Section 30(c)]

Please let me know if any you have any questions on any of the above, I will be happy to help.

Kind regards,

[Redacted – Section 38(1)]

Head of Scottish Inquiry Engagement and Wider Scrutiny
Covid Inquiry Information Governance Division
Covid Inquiries Response Directorate
Scottish Government
[Redacted – Section 38(1)]

Document 5 (attachment)

From: [Redacted – Section 38(1)]
Covid Inquiries Response Directorate
14.07.23

First Minister

Deputy First Minister and Cabinet Secretary for Finance

Submission on the response to [Redacted – Section 30(c)]

Priority and Purpose

1. [Redacted – Section 30(c)]

Recommendation

2. Ministers are advised to:
 - **Note** the draft response to the UK Inquiry and advise of any feedback by 14:00 17 July.

Context and Issues

3. [Redacted – Section 30(c)]
4. [Redacted – Section 30(c)]
5. [Redacted – Section 30(c)]

Overview of proposed response

6. [Redacted – Section 30(c)]
7. [Redacted – Section 30(c)]
8. [Redacted – Section 30(c)]
9. [Redacted – Section 30(c)]
10. [Redacted – Section 30(c)]
11. [Redacted – Section 30(c)]

Sensitivities

12. [Redacted – Section 30(c)]

Quality Assurance

13. The proposed responses has been reviewed and cleared by SCS in DG Corporate, DG Economy and DG Health and Social Care. The draft responses have also been reviewed and cleared by SGLD. This submission has been reviewed by Tabitha Stringer, Deputy Director Covid Inquiries Response Directorate.

14. This submission is also provided to the Solicitor General for awareness only. We are not seeking any comments or analysis of the draft responses from the Solicitor General.

Next steps

15. Ministers are invited to review this submission and accompanying documents and if they wish supply any comments by 14:00 17 July.
16. Officials will submit the responses to the Inquiry for COP 17 July.

Cabinet Secretaries and Ministers Copy List	For Action	For Information Portfolio interest	For Information Constituency interest	For Information General awareness
First Minister	No	No	No	Yes
Deputy First Minister and Cabinet Secretary for Finance	No	No	No	Yes
Solicitor General	No	No	No	Yes

Officials Copy List
DG Corporate
DG Economy
DG Health and Social Care
Permanent Secretary
Legal Secretary to Lord Advocate
Davie Hutchison
Claire Tynte-Irvine
Tabitha Stringer
Linda Pooley
[Redacted – Section 38(1)]
[Redacted – Section 38(1)]
[Redacted – Section 38(1)]
[Redacted – Section 38(1)]
[Redacted – Section 38(1)]
[Redacted – Section 38(1)]
[Redacted – Section 38(1)]

Document 6

From: [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>
Sent: Friday, June 30, 2023 6:31 PM
To: Deputy First Minister and Cabinet Secretary for Finance <DFMCSF@gov.scot>; First Minister <FirstMinister@gov.scot>; Cabinet Secretary for NHS Recovery, Health and Social Care <CabSecNRHSC@gov.scot>
Cc: [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; Communications DFM & Finance <CommunicationsDFMandFinance@gov.scot>; Communications Duty Box <CommunicationsDutyBox@gov.scot>; Ross Ingebrigtsen <Ross.Ingebrigtsen@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; Claire Tynte-irvine <Claire.Tynte-irvine@gov.scot>; [Redacted – Section 38(1)] [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; Kevin Pringle <Kevin.Pringle@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section

38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; Claire Tynte-irvine <Claire.Tynte-irvine@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; Emily Mackintosh <Emily.Mackintosh@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)]< [Redacted – Section 38(1)]@gov.scot>; Christopher Mackie <Christopher.Mackie@gov.scot>; Jack Middleton <Jack.Middleton@gov.scot>; David Hutchison <David.Hutchison@gov.scot>; Callum McCaig <Callum.Mccaig@gov.scot>; Minister for Local Government Empowerment & Planning <MinisterLGEP@gov.scot>; Minister for Parliamentary Business <MinisterforPB@gov.scot>
Subject: LINES TO CLEAR - UK Covid inquiry - former First Minister - Mail on Sunday

PO DFM – for clearance

PO FM, PO Cab Sec for NHS Recovery, Health and Social Care – for awareness

The Mail on Sunday has been in touch regarding FFM's travel to the UK COVID Inquiry in London.

The journalist has asked:

It's to ask for any comment, if it's possible please, on how Nicola Sturgeon travelled to the Covid Inquiry in London this week.

Reason for asking is video clip on Twitter (eg STV news) which shows Ms Sturgeon getting out of Edinburgh registered vehicle SL19 VHX (believe this may be with City Cabs as per Scot Govt contract) .. ie it's to ask if Ms Sturgeon used this vehicle to get to travel from Edinburgh to London, or if it travelled there to pick her up? Any help with this inquiry appreciated.

The response below has been cleared with policy colleagues and spads. In addition to the response we plan to verbally brief the journalist that while we cannot get into travel arrangements for security reasons, FFM was not driven down to London in an Edinburgh taxi.

A Scottish Government spokesperson said:

“We do not comment on the travel arrangements of the former First Minister given security considerations.”

Can you confirm if DFM is content with this approach?

Thanks,

[Redacted – Section 38(1)]

[Redacted – Section 38(1)]My working days are Tuesday to Friday

Document 7

From: [Redacted – Section 38(1)] <[Redacted – Section 38(1)]@gov.scot>

Sent: Thursday, July 6, 2023 4:41 PM

To: First Minister <FirstMinister@gov.scot>; Deputy First Minister and Cabinet Secretary for Finance <DFMCSF@gov.scot>; [Redacted – Section 38(1)] <[Redacted – Section 38(1)]@gov.scot>

Cc: Solicitor General <SolicitorGeneral@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; DG Education & Justice <dgej@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; Ruaraidh Macniven <Ruaraidh.Macniven@gov.scot>; Communications First Minister <CommunicationsFirstMinister@gov.scot>; Donald McGillivray <Donald.McGillivray@gov.scot>; Director of Safer Communities <DirectorofSaferCommunities@gov.scot>; [Redacted – Section 38(1)] <[Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)] <[Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)] <[Redacted – Section 38(1)]@gov.scot>; DSF : Covid Inquiry Establishment <DLCEAVDORCIEA@gov.scot>; Communications DFM & Finance <CommunicationsDFMandFinance@gov.scot>; David Hutchison <David.Hutchison@gov.scot>; [Redacted – Section 38(1)] <[Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)] <[Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)] <[Redacted – Section 38(1)]@gov.scot>; Callum McCaig <Callum.Mccaig@gov.scot>; Denise Swanson <Denise.Swanson@gov.scot>; [Redacted – Section 38(1)] <[Redacted – Section 38(1)]@gov.scot>; Director of Justice <DirectorofJustice@gov.scot>; Craig French <Craig.French@gov.scot>; [Redacted – Section 38(1)] <[Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)] <[Redacted – Section 38(1)]@gov.scot>; [Redacted – Section 38(1)] <[Redacted – Section 38(1)]@gov.scot>

Subject: RE: Urgent - For information - Scottish COVID-19 Inquiry Intervention in Judicial Review

OFFICIAL-SENSITIVE

HANDLING INSTRUCTIONS: This note is provided for Ministers by the Covid Inquiry Establishment Division in our role as inquiry sponsorship team. To avoid conflict of interest between Scottish Government's interests as sponsor of and respondent to the Covid Inquiries, and in line with the ethical wall arrangements in place between the sponsorship and response functions, it should not be shared with or cross-copied to officials on the inquiry response side in Covid Inquiry Information Governance Division/Covid Inquiries Response Directorate. Please do not hesitate to contact us to discuss these arrangements further, and we will be happy to assist with any questions or supporting information which would be helpful.

PS/First Minister

PS/Deputy First Minister and Cabinet Secretary for Finance

Copy to: Solicitor General

Officials on copy list (**restricted handling**)

This update serves to inform Ministers that:

1. The judgment of the High Court of England and Wales in this case was handed down at 2.30pm today. The court dismissed the Cabinet Office's judicial review. The court found that the section 21 notice issued by the Chair of the UK COVID-19 Inquiry to the Cabinet Office was valid; and that the Chair of the Inquiry acted rationally:
 - a. The court noted that just because a section 21 notice would yield some irrelevant documents does not invalidate the notice. Inquiries are to be given a latitude to enable them to "fish" for documents, meaning to make informed but speculative requests for documents relevant to lines of inquiry, or documents which lead to new lines of inquiry.
 - b. The court recorded that the Cabinet Office may still apply to the Chair of the Inquiry that it is unreasonable to produce material which does not relate to a matter in question at the inquiry. The court was satisfied that the Inquiries Act provides a suitable scheme for the determination of such an application. In particular, the Chair of an Inquiry could see the disputed material for the purpose of determining the application. If the Chair of the Inquiry rules that a document does not relate to a matter in question at the inquiry, then the Chair will not be entitled to retain the document. If an Inquiry Chair rules that a document relates to a matter in question at the inquiry and the person producing the document continues to contend that it does not do so, that person may refuse to produce the document (albeit at the risk of criminal proceedings) and invite the Chair to certify the question to be determined by the High Court, or in Scotland the Court of Session. The court would then determine the issue for itself after hearing evidence.
2. The Cabinet Office has said it will not appeal the judgment, and will comply fully with it and work with the UK Inquiry team on the practical arrangements. In a statement it said the judgment was a "sensible resolution" that will mean "the inquiry Chair is able to see the information she may deem relevant, but we can work together to have an arrangement that respects the privacy of individuals and ensures completely irrelevant information is returned and not retained".
3. [Redacted – Section 30(b)(ii)]
4. [Redacted – Section 30(b)(ii)]. **In the meantime Ministers are invited to note the above for information.**

[Redacted – Section 38(1)]
Policy and Programme
Covid Inquiry Establishment
Directorate for Safer Communities

Scottish Government
St Andrew's House
Regent Road
Edinburgh EH1 3DG